

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH(SMC)(HEARD BY DIVISION BENCH), ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 17/ALLD/2022
Assessment Year: 2017-18

Smt. Shashi Bala H.no. 430/422-D, Buxi Khurd, Daraganj Prayagraj-211006, U.P.	v.	Income-Tax Officer WARD-1(5), Allahabad , U.P.
PAN: AJUPC1839N		
(Appellant)		(Respondent)

Appellant by:	Shri N.C.Agrawal, C.A.
Respondent by:	Shri A. K. Singh, Sr. DR
Date of hearing:	21. 11. 2022
Date of pronouncement:	21.11. 2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 17/Alld/2022, is directed against an ex-parte appellate order dated 31.03.2022 in Appeal No. CIT(A), Allahabad/10485/2019-20 passed by learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi(hereinafter called "the CIT(A)"),for assessment year(ay):2017-18, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 02.12.2019 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2017-18(Order No. ITBA/AST/S/143(3)/2019-20/1021510765(1)). This appeal is heard by Division Bench of Income Tax Appellate Tribunal, Allahabad Bench, Allahabad.

2. The brief facts of the case are that the assessment in the case of the assessee was framed by AO u/s 143(3) of the 1961 Act , vide assessment order dated 02.12.2019 , wherein additions to the tune of Rs. 5,07,500/- were made by the AO to the returned income of the assessee.

3. Aggrieved, by additions made by the AO , the assessee challenged the additions as were made by the AO by filing first appeal with learned CIT(A), who dismissed the appeal of the assessee in an ex-parte appellate order dated 31.03.2012 passed by learned CIT(A).

4. The assessee being aggrieved by the aforesaid appellate order passed by learned CIT(A) has filed second appeal with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “ the tribunal”) and as many as four grounds of appeal are raised by assessee in memo of appeal filed with the tribunal.

5. This appeal was heard by Division Bench of the tribunal . The Id. Counsel for the assessee opened arguments before the Bench and stated that it is an ex-parte appellate order passed by learned CIT(A) where in appeal of the assessee was dismissed by Id CIT(A) ex-parte in the absence of assessee in limine without discussing the issues on merits. The Id. Counsel for the assessee also submitted that the appeal with Id. CIT(A) was filed on 14.01.2020, and thereafter from March, 2020 there was a national health crisis by way of Covid-19 pandemic, and the assessee could not appear before Id. CIT(A) , although the appeal was decided through faceless hearings. It was submitted that the assessee did not get notices from Id. CIT(A) as the email address/phone number of advocate was given who did not forwarded these notices, which was the main reason for non submissions of details by the assessee before Id. CIT(A). It was submitted that Id. CIT(A) ought to have decided the issue on merit as is required u/s 250(6) of the 1961 Act, but the order was decided ex-parte in limine by Id. CIT(A) without giving independent reasoning of its own . It was submitted that the even facts stated in the statement of facts were

not considered by ld. CIT(A) . The learned counsel for the assessee prayed that the matter may be set aside to the file of ld. CIT(A) for denovo adjudication . The ld. Counsel for the assessee stated that the assessee will duly co-operate with learned CIT(A) when the appeal will come up for hearing before learned CIT(A) in second round of litigation . The ld. DR fairly submitted that Revenue has no objection if the matter is restored to the file of learned CIT(A) for fresh adjudication on merits in accordance with law.

6. We have heard rival parties and perused the material on record. We have observed that the assessment proceedings were initiated by Revenue through CASS for limited scrutiny by invoking provisions of Section 143(2) of the 1961 Act , which culminated into assessment order dated 02.12.2019 passed by AO u/s 143(3) of the 1961 Act , wherein additions to the tune of Rs. 5,07,500/- were made by the AO to the returned income of the assessee. The assessee filed first appeal before learned CIT(A). The learned CIT(A) gave several opportunities of hearing to the assessee as are stated/extracted in the appellate order passed by learned CIT(A), but the assessee did not appear before the learned CIT(A), who was then dismissed the appeal of the assessee ex-parte in the absence of the assessee , in limine without discussing the issues on merits which were raised by assessee in grounds of appeal in the memo of appeal filed with ld. CIT(A) and the assessment order passed by the AO was upheld by learned CIT(A) by dismissing appeal of the assessee, by holding as under:

“8. Held : I have perused the assessment order of the Assessing Officer and considered the facts of the case . The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated in para 4.1 above. No details , documents or submission have been provided by the appellant to substantiate its claims. The facts mentioned in Form No. 35 cannot be considered in the absence of any documentary evidences. The AO has passed a very reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for . Therefore, the ground of appeal no. 4 is dismissed.

9. in the result , the appeal is Dismissed.”

Reference is made to provisions of Section 250(6) of the 1961 Act, wherein learned CIT(A) is obligated to state points for determination in appeal before him, the decision thereon and the reasons for determination, but the same is not followed by ld. CIT(A) and issues were not discussed and decided by ld. CIT(A) on merits by giving its own reasoning before dismissing appeal filed by assessee. On the part of the assessee, there was a consistent failure to appear before the learned CIT(A) when the appeal was called for hearing before learned CIT(A), which led learned CIT(A) to pass an ex-parte appellate order. As is emanating from appellate order passed by ld. CIT(A), as many as five notices were issued by ld. CIT(A), dated 03.09.2020, 30.12.2020, 19.02.2021 , 28.12.2021 and 23.03.2022, but the assessee did not appear before ld. CIT(A). The Hon'ble Supreme Court suspended the limitation period for filing appeals from time to time, effectively for the period from 15.03.2020 to 28.02.2022 , keeping in view national health crisis faced by the Country owing to Covid-19 pandemic. It is true that the issue in the aforesaid impugned order does not concerns itself with filing of appeal between the aforesaid suspended period of limitation, but it is also equally true that national health crisis being faced by the Country was recognized by Hon'ble Supreme Court while suspending limitation period. It is also equally true that there were several lockdowns which were imposed by Central /State Government , during the Covid 19 pandemic keeping in view first and second wave of the aforesaid disease. Out of five notices as elaborated above, four notices issued by ld. CIT(A) falls within the period 15.03.2020 to 28.02.2022, while one notice was issued post 28.02.2022 i.e. on 23.03.2022 which also remained non complied with by the assessee. Thus, assessee is equally to be blamed for its woes as the assessee did not appear before the learned CIT(A). Now, before us, both the parties have submitted that keeping in view facts and circumstances of the case, the appellate order passed by learned

CIT(A) be set aside and matter be remanded back to the file of learned CIT(A) for fresh adjudication of the appeal filed by assessee with learned CIT(A). After considering the entire material on record, we are of the considered view that the interest of justice will be served if the appellate order dated 31.03.2022 passed by ld. CIT(A) be set aside and the matter is set aside/restored back to the file of learned CIT(A) for fresh adjudication of the appeal filed with learned CIT(A). The assessee did not co-operated with learned CIT(A) in the first round of litigation and if in the set aside remand proceedings , if the assessee again did not co-operate , the learned CIT(A) shall be free to decide the appeal , on merits in accordance with law. Needless to say that the learned CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in the set aside remand proceedings for denovo adjudication of the appeal of the assessee filed before learned CIT(A). We clarify that we have not commented on the merits of the issue in appeal. We order accordingly.

7. In the result, the appeal filed by the assessee with tribunal in ITA No. 17/Alld./2022 for ay: 2017-18 is allowed for statistical purposes, as indicated above.

Order pronounced in the open court on 21/11/2022 at Allahabad at the conclusion
of hearing in the presence of both the parties

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 21/11/2022

Copy forwarded to:

1. Appellant –Smt. Shashi Bala, H.No. 430/422-D, Buxi Khurd, Daraganj, Allahabad-211006, U.P.
2. Respondent – ITO, -1(5),Allahabad, U.P.
3. CIT(A) –National facelees Appeal Centre, New Delhi/ CIT(A), Allahabad, U.P.
4. CIT, Allahabad, U.P.
5. DR –Sr. DR, ITAT, Allahabad, U.P.

By order
Assistant Registrar